

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 57559**

Petitioner:

**BENNETT A. AUSLAENDER AND KAREN S.  
ROSENBERG,**

v.

Respondent:

**JEFFERSON COUNTY BOARD OF  
COMMISSIONERS.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on October 11, 2011, James R. Meurer and Lyle D. Hansen presiding. Mr. Bennett A. Auslaender and Ms. Karen S. Rosenberg appeared pro se on behalf of Petitioners. Respondent was represented by James Burgess, Esq. Petitioners are protesting the 2009 classification of the subject property. Petitioners are also requesting an abatement/refund of taxes on the subject property for tax year 2009.

Subject property is described as follows:

**10524 US Highway 285, Conifer, Colorado 80433  
Jefferson County Schedule No. 028412**

The subject property consists of a vacant lot containing a total of 7.626 acres, more or less. The lot is level to sloping and covered with natural forest. There is a chain-link fence that encompasses the subject lot and the residential lot to the north. A permitted road crosses the parcel giving access from U.S. Highway 285 to a single-family residence located on the adjacent lot.

Petitioners are requesting residential classification and an actual value of \$86,230.00 for the subject property for tax year 2009. Respondent assigned a vacant land classification and a value of \$139,080.00 for the subject property for tax year 2009.

Petitioner presented no comparable sales.

The issue before the Board involved the definition of “residential land.”

Section 39-1-102(14.4), C.R.S., defines “residential land” as “ a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon.”

Petitioner, Mr. Bennett Auslaender, testified that he is the owner of the subject parcel that is vacant land and that he and Petitioner, Ms. Karen Rosenberg, are the owners of the adjacent parcel where their single-family residence is located. This improved parcel is classified as residential. He testified that the subject parcel was, prior to 2009, classified by the Jefferson County Assessor as residential but that classification was changed to vacant land in 2009. Mr. Auslaender testified that both the vacant parcel and the parcel where the single-family residence is located are completely surrounded by a chain-link fence that he installed in the early 1980s. He testified that a public access drive extends from U. S. Highway 285 across the subject parcel to the parcel containing the single-family residence. This drive provides access to the residence from the highway for Petitioners. He testified that both parcels would be conveyed as one unit rather than as two separate units if they were placed on the market for sale. Mr. Auslaender testified that a well monitoring agreement exists involving the Conifer Town Center parcel and the surrounding parcels which include the unimproved subject parcel and the residential-improved subject parcel.

Petitioner, Ms. Karen Rosenberg, testified that Jefferson County required the well monitoring agreement involving the surrounding parcel owners. She testified that Jefferson County, in requiring the agreement, did not require two different agreements from property owners for the subject parcel and the residential-improved parcel; instead, they accepted one agreement for both parcels. She testified that this action indicated that Jefferson County considered the subject parcel and the residential-improved parcel to be under the same ownership.

With reference to the statutory definition of “residential land,” Petitioners have concluded that the subject property was incorrectly classified as “vacant land” rather than “residential land” because the subject parcel adjoins the residential-improved parcel, it is in common ownership with and is used in connection with the residential-improved parcel. Petitioners concluded that, as of January 1, 2009, Mr. Bennett Auslaender’s name appears on both parcels as the owner of record and that the “common ownership” test of the state statute had been met.

Petitioner is requesting a 2009 residential classification for the subject property and a value under that classification at \$86,230.00.

Respondent presented a value of \$139,080.00 for the subject property based on the market approach.

Respondent presented three comparable sales ranging in sale price from \$145,000.00 to \$210,000.00 and in size from 6.207 to 15.863 acres. After adjustments were made, the sales ranged from \$146,450.00 to \$165,000.00.

Respondent's attorney, Mr. James Burgess, in his opening statement, stated that the state statute's definition of "residential land" includes the requirement that parcels of land being considered must be under "common ownership." He stated that common ownership requires "identical ownership" in the owners of record for the parcels of land being considered. He stated that the recorded owners of record for each of the two parcels are not identical.

Respondent's witness, Ms. Tammy Crowley, a Licensed Appraiser for the Jefferson County Assessor, testified that public record shows that the stated owner of record for the subject parcel and the residential-improved parcel were not identical. She testified that as of January 1, 2009, the owner of record for the subject parcel was "Bennett A. Auslaender" and that the owner of record for the residential-improved parcel was "Bennett A. Auslaender and Karen S. Rosenberg."

Respondent assigned an actual value of \$139,080.00 to the subject property for tax year 2009.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2009.

The Board reviewed the definitions for "residential land" and "residential improvements." Section 39-1-102(14.4), C.R.S. defines "residential land" as "a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. . . . " According to Section 39-1-102(14.3), C.R.S., the definition of "residential improvements" includes "buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use."

The Board reviewed Colorado case law applicable for this Petition. As provided by Colorado case law, a parcel of land can qualify for residential classification in one of two ways: "either by itself containing a residential dwelling unit that is used as such or, alternatively, by having residential improvements other than a dwelling unit and being used as a unit in conjunction with a residential dwelling unit located on a contiguous parcel that is under common ownership [. . .]." *Sullivan v. Board of Equalization of Denver*, 971 P.2d 675, 676 (Colo. App. 1998).

With specific reference to the question involving the interpretation of "common ownership" meaning "identical ownership" as represented by Respondent's position, the Board gave consideration to citations from the two following legal cases:

1. ". . . [A] common sense reading of the phrase 'related by common ownership' suggests that complete identity of ownership is not required . . ." *Walcker v. SN Commercial, LLC*, 2006 WL 3192503 (E.D.Wash. Nov.2, 2006).

2. "Although it is true that . . . there is no complete identity of ownership interests, it is apparent that a pattern of common ownership exists . . ." *National Labor Relations Board v. Carson Cable TV*, 795 F.2d 879, 882 (9th Cir. 1986).

The Board was not convinced that common ownership requires "identical ownership" in the owners of record for the parcels of land being considered. The Board agreed with Petitioners in that the subject property was incorrectly classified as vacant land. The Board agreed that the subject

parcel meets the tests stated for residential land in the state statute in that the subject property is contiguous with the residential improved parcel; that the subject parcel is under common ownership with the adjacent residential improved parcel; that the subject parcel is used as a common unit with the adjacent residential improved parcel; that the subject parcel would likely be conveyed with the adjacent residential improved parcel; and, that the primary purpose of the subject parcel is for the support, enjoyment, or other noncommercial activity of the occupant of the adjacent residential improved parcel.

The Board concluded that the 2009 classification of the subject property should be changed to residential and that the subject parcel be re-appraised under the residential classification.

### **ORDER:**

Respondent is ordered to change the 2009 classification of the subject property to residential and to re-appraise the subject parcel under the residential classification. The Jefferson County Assessor is directed to change their records accordingly.

### **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

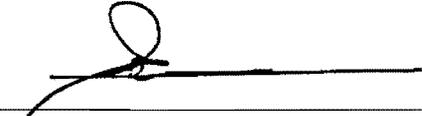
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 26th day of October, 2011.

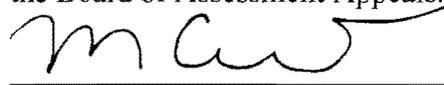


**BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
James R. Meurer

  
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Lyle D. Hansen

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.

  
\_\_\_\_\_  
Milla Crichton